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ABSTRACT

Child abuse reporting statutes in all United States jurisdictions impose obligations on psychologists. Requiring psychologists to report known or suspected abuse may interfere with psychotherapy and discourage abusers from seeking therapy. Although the child abuse reporting statutes vary considerably, state statutes share common features. There has been a tendency to provide for reporting to children's protective services agencies rather than law enforcement agencies, to provide for central registries of child abuse within the state, and to broaden the reporting requirements by expanding the definition of abuse and neglect and by increasing the groups of persons required to report. It is now common to require reports from all medical personnel, social service workers, teachers and schools, and law enforcement officers. Many states require anyone suspecting or knowing of child abuse to report it. Although states vary in the definition of abuse, it generally includes physical injury, sexual molestation, emotional injury, or neglect. Failure to report and the large number of unsubstantiated reported cases suggest that there are serious problems with child abuse reporting laws. Reforms are needed which would sharpen and narrow the definition of child abuse; eliminate the reporting requirement when the information is received from an abuser seeking psychotherapy to stop the abuse; and provide a qualified immunity from prosecution for those abusers who voluntarily seek therapy. (NRB)

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CHILD ABUSE REPORTING:

CURRENT REPORTING LAWS AND PROPOSED REFORMS

Presented

American Psychological Association
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Child abuse reporting statutes have now been adopted in all jurisdictions in the United States. These statutes impose significant obligations on psychologists and other mental health professionals. Psychologists may be required to report known or suspected abuse, and this duty to report may interfere with the provision of effective psychotherapy. (Dr. Meyer will discuss in greater detail the potential problems these laws have for effective psychotherapy.) Abuse reporting laws may, ironically, serve to discourage abusers from voluntarily seeking therapy.

In this paper, child abuse reporting statutes are described and reforms proposed to reduce the potential for potential harm from those statutes. The reforms would sharpen and narrow the definition of child abuse; eliminate the reporting requirement when the information is received from an abuser who is seeking psychotherapy to stop the abuse; and provide a qualified immunity from prosecution for those abusers who voluntarily seek therapy.

Abuse Reporting Statutes

The concept of the abuse reporting statutes is that by receiving early reports of child abuse social service agencies can intervene in the family, remove the child temporarily if there is an extremely dangerous situation, and then provide counseling which will change the abusive situation.[1] The ideal of the child abuse reporting and intervention system has not in practice met its theoretical expectations.[2]

The problem of child abuse and neglect is not a small one. It is, of course, impossible to obtain accurate figures about the amount of child abuse. In the United States there is "informed speculation" that annually three million children are the subject of abuse or neglect.[3]

The child abuse reporting statutes that have been adopted vary considerably from jurisdiction to jurisdiction.[4] Reporting statutes in the United States are a matter of state law. Federal law has encouraged the adoption and development of state abuse reporting, investigation, and intervention,[5] and the states have adopted a variety of reporting statutes. The provisions described here summarize the more common features of state statutes in the United States.

Mandatory child abuse reporting statutes are relatively new and have been the subject of many changes during their short history. In 1963, the United States Children's Bureau proposed "principles and suggested language for legislation on reporting of the physically abused child."[6] States adopted mandatory reporting laws at an astonishing rate,[7] and within four years all 50 states had adopted

reporting laws.[8] The current laws are sometimes referred to as the third or fourth generation of child abuse reporting statutes.[9]

The tendency during the past twenty years has been to provide for reporting to children's protective services agencies rather than law enforcement agencies, to provide for central registries of child abuse within the state, and to broaden the reporting requirements by expanding the definition of abuse and neglect and by increasing the groups of persons required to report.[10] The first two of these changes reflect a desire to be able to move quickly to protect children, to intervene in families to stop abuse rather than prosecute parents through the criminal law, and to maintain some level of confidentiality of family matters. The second trend, the expansion of reporting requirements, has resulted in an increase in the obligation of psychologists and other mental health professionals to breach the confidences of therapy by reporting to state authorities suspected abuse or neglect.

Statutes may require (mandatory) or permit (voluntary) individuals to report child abuse. The tendency has been to expand the groups of persons required to report. The early statutes required physicians to report, but it is now common to require reports from all medical personnel (including physicians, nurses, allied health personnel, psychologists, and counselors), social service workers, teachers and schools, and law enforcement officers.[11] Many states now require that "anyone" or "any person" suspecting or knowing of child abuse to report it. Virtually all states impose a duty on psychologists to report child abuse or neglect.

Adding to the confusion is the requirement that a report be made if there is reasonable suspicion of abuse.[12] Thus, a therapist reasonably suspecting any of the broadly defined forms of child abuse is technically required in many states to report the suspicion.

Early statutes defined child abuse in terms of serious physical injuries. States have expanded the definition of abuse considerably. Although states vary in the definition of abuse, it generally includes two or more the following: (1) physical injury, (2) sexual molestation, (3) emotional injury, and (4) neglect. There is ordinarily a requirement that the injury be "serious" or a "serious threat to welfare." These terms are generally left undefined or are so broadly defined that the definition serves little useful purpose.[13] The natural result of this uncertainty is that there is great confusion about what child abuse and neglect includes. It is therefore nearly impossible for those required to report to know what events must be reported.

There are positive aspects of the expansion of the concept of child abuse and neglect. Emotional injuries are real and should be recognized by the law. On the other hand, the extreme breadth of many child abuse reporting statutes, coupled with the absence of any meaningful definition of terms, leaves professionals at a loss to know what they are required to report. The uncertainty concerning what is and is not child abuse and what must be reported may be adversely affecting the ability of authorities to discover and successfully deal with abuse. The National Study of Child Abuse[14] found that nearly 60% of the children reported to child protection agencies as suspected victims of child abuse could not be substantiated by the agencies as

actually being victims. Moreover, only half of the approximately 40% of the reports that were substantiated met the criteria for inclusion in the study. (The study definition provided definite criteria for abuse and were somewhat more limited than the social services agencies' definition of abuse.) Thus, perhaps as few as 20% of the reports to social services agencies involve significant neglect or abuse which can be substantiated.[15] The problem of overreporting is significant: the National Study estimated that 1.1 million child abuse and neglect reports are filed with child protective service agencies each year, and more than 600,000 of these probably cannot be substantiated even using the broad definitions often employed by the protective service agencies.[16]

Ironically, the uncertainty concerning the definition of child abuse and neglect may also contribute to significant. The National Study found that 68% of the children who were reported to the Study as being within the scope of abuse and neglect (using a definition probably somewhat narrower than many statutes) were not reported to the child protection agency or otherwise known to the child protection agency. Only 21% of the child abuse cases noted by agencies outside the child protection agency were reported. If anything, the actual rate of reporting nationwide may be even lower than indicated by the study.[17]

The combination of significant failure to report and the large number of unsubstantiated reported cases suggest that there is considerable confusion about what constitutes child abuse or neglect.[18] A significant price is paid for this confusion. Actual abuse that is not dealt with may result is serious harm to the child. On

the other hand, false reports, even if made in good faith, may disrupt families,[19] invade privacy,[20] and make some relationships more difficult to maintain.[21] Particularly when the report comes from a psychotherapist, it may disrupt therapy and reduce the chance of successfully dealing with the problems of the patient. In addition, the reporting of abuse may result in "secondary" abuse, or secondary victimization.[22]

The failure to report known or suspected child abuse or neglect may result in criminal or civil liability or professional discipline. Most states make a criminal offense the failure to report known or suspected abuse or neglect. Ordinarily this is a misdemeanor which may result in a fine or short jail sentence. Given the large number of abuse cases which are not reported, there are surprisingly few instances of criminal prosecution for failure to report. Criminal prosecutions are more likely where the failure to report results in serious physical injury or the death of a child. In some instances, the reporting statutes are so broad that the failure to report might be defended on the ground that the statute is unconstitutional because of its vagueness.[23] It is unlikely that such a defense would be successful were the abuse to the child is significant and clearly within the events required by the statute to be reported.[24]

Some states specifically provide that a child who is injured after a failure to make a required report has a civil claim against the person failing to make the report.[25] Thus, a mental health professional treating a child abuser who fails to report the abuse and whose patient then seriously injures the child may be subject to liability for the damages done in the subsequent abuse. Even without express

statutory provisions, civil liability might be imposed for failure to diagnosis or report child abuse on the basis of negligence per se[26] or on the basis of ordinary malpractice negligence.[27] In fact such civil liability has resulted in the past from failure to diagnosis abuse or neglect.[28] It has been suggested that such civil liability is likely to be more effective than criminal liability in ensuring that abuse is properly diagnosed and reported. This form of civil liability will probably continue to expand in the future.

The failure to perform obligations imposed by statute, including reporting abuse, may be the basis for professional discipline including license suspension. It is unlikely that the failure to report would result in such discipline except in extraordinary cases.[29]

On the other hand, there are few legal consequences of making a child abuse or neglect report if the report is made in good faith. States generally provide immunity against civil liability.[30] The obligation to report supercedes the obligation to maintain the confidences of therapy, so good faith reports should not result in successful actions for violation of privacy rights or for malpractice claims related to releasing the information.[31] If reports are not made in good faith, however, civil liability, and criminal liability, for filing a false official report are possible.

Reforms of Abuse Reporting Laws

There are serious problems with current child abuse reporting laws. Among the problems are: the definitions of abuse and neglect are so general as to be virtually meaningless, they provide little guidance about whether an event must be reported or not. The abuse and neglect required to be reported are so broad that a great many of the children seen by psychologists and other mental health professionals may fall within the outer boundaries of abuse or neglect; it is not realistic or productive to expect psychologists to report potential abuse or neglect for so many of the children they see. Requiring therapists to report all of their patients whom they suspect of abuse or neglect results in the unnecessary invasion of the privacy of many families. Current laws discourage abusers from voluntarily seeking psychotherapy to stop the abuse. A broad abrogation of psychotherapist-patient privilege may further interfere with the therapy of many patients.

Definitions. The definitions of abuse and neglect have been "drafted in a rather cavalier manner."[32] Abuse reporting laws should be re-drafted with two purposes in mind: narrowing the statutes so that they deal only with the most serious injuries (injuries with which the state is prepared to deal), and ensuring that they are clear and definite so a reasonable person will know with some certainty whether or not reporting is required in any given instance.[33] This re-drafting the definition is not an easy one. For one thing, it probably will require an admission that there are some injuries to children with which the state is not prepared to deal. There has been some recognition of this principle in other areas of the law. For

example, courts have refused to order treatment for children if the treatment is not necessarily to save the life of the child even the child will be harmed by the absence of the medical treatment,[34] and parents have been permitted to make educational choices for children which many believe are probably harmful.[35]

Particularly in the area of neglect and emotional injury, the definitions require significant narrowing and clarification. This is essential to avoid unconstitutional interference with parental rights in child rearing, to permit therapists and others to know when reporting is required and to avoid the very high levels of underreporting and overreporting which currently exist.[36] State resources for investigating and intervening in child abuse are limited. These resources are wasted when so many false reports are made because there is no clear understanding of what constitutes child abuse and neglect.

Duty to Report. Psychologists' and other mental health professionals' duty to report should be narrowed. The most radical reform in this area would be to remove all obligation of psychotherapists to report. Some statutes seem to permit such a broad exception for another group of professionals, attorneys. Much can be said for the proposal to eliminate the duty of psychotherapists to report. However, the reasons for not requiring reporting are no longer persuasive when: (1) the information comes from someone other than the abuser or the abuser's spouse, (2) therapy is breaking down and has no reasonable hope for success and the abuse is continuing, or (3) there is a real threat that the child may be killed or suffer very serious permanent personal injury if the abuse is not reported immediately. Therefore, therapists should be obligated to report child abuse when

that information is received from the abuser or the abuser's spouse only if there is a threat of permanent serious physical harm to the child, or there is a threat of harm to the child and therapy is not continuing.

Unfortunately such a standard does not guaranteed absolute confidentiality to abusers and may discourage some from seeking therapy. In addition, it requires therapists to make predictions about when there is a threat of serious physical harm to a child. These are often difficult predictions to make, although they are not unlike the predictions of dangerousness currently required in other contexts.[37] In fact, this may simply state a Tarasoff-type rule for child abuse.[38] It has the advantage, however, of distinctly narrowing the circumstances in which confidences would be violated and of providing the greatest protection possible of the confidences of therapy consistent with the prevention of death and serious injury to children.

Testimonial Privileges. Medical privileges and psychotherapist-patient privileges should not be lost each time an abuser "confesses" the abuse to a psychotherapist or physician.[39] To encourage abusers to seek therapy and to be open in therapy, they should be assured that their confession to a therapist of child abuse will not be used against them in a criminal case or in child custody proceedings. Destroying the privilege will seldom directly benefit a child, and when there is a possibility of a child custody hearing (e.g. in a divorce action), it makes it extremely difficult for an abuser to seek effective therapy and remain open in the course of therapy. This rule would promote the immediate interest of

protecting the child by permitting some reporting of abuse, but at the same time, minimize the invasion of confidentiality and perhaps minimize the disincentive for abusers to seek treatment.[40]

Encourage Voluntary Treatment. The law should encourage abusers to voluntarily seek treatment without the necessity of state intervention. State and special services resources are grossly inadequate to deal with all child abuse.[41] It is essential that we depend upon other resources for dealing with the abuser. We can encourage voluntary treatment through public education and by making treatment as non-threatening and attractive as possible. We can encourage voluntary treatment by first ensuring that insofar as possible the confidences of the abuser will remain protected and that the abuser will not be reported to state official; and second, by adopting a qualified immunity system to encourage abusers to seek therapy.[42]

A qualified immunity from criminal prosecution for abuse conducted prior to seeking psychotherapy might encourage abusers to voluntarily seek professional assistance. The immunity would apply only if the therapy were voluntary. It would not apply if the therapy were sought "in contemplation" of being apprehended or prosecuted. That is, the immunity would not be guaranteed if therapy were entered after prosecution for the crime began or after a child abuse report had been made or investigated by a social services agency. The agency should, however, have discretionary authority to provide for such immunity upon the condition that effective therapy was sought. The immunity would also be lost if the abuser engaged in any additional child abuse activity after seeking therapy. Finally,

the immunity would not extend to acts which resulted in the death of a child or permanent serious physical injury to the child.

Several practical difficulties would have to be solved. This immunity would, of course, have to be adopted by the legislature because it is unlikely that any courts or administrative offices would have the authority to establish this kind of qualified immunity from criminal prosecution.

A qualified immunity is consistent with the child abuse reporting principle of encouraging rehabilitation and growth rather than imposing punishment. Some may object that the qualified immunity would allow some child abusers to escape criminal punishment and, of course, that might be the case in a few instances. Such instances would probably be quite rare. It is unusual for a parent to be successfully prosecuted for child abuse or neglect unless the child has died or suffered very serious permanent injury. Child abuse cases are often quite difficult to prove and to prosecute.[43] And, in recent years, the emphasis has been on treatment rather than prosecution. Even if some abusers did escape punishment, little harm would flow from such an "escape." The deterrence of the law would not be lost. It is unlikely that parents would be encouraged to engage in child abuse because they calculate that they can seek early treatment and thereby avoid criminal prosecution.[44] The real purpose of the law, promoting the cessation of abuse and strengthening families, would be accomplished through the qualified immunity proposal.[45] Furthermore, by removing some of the demand for social service agency to investigate abuse reports, those agencies could

more effectively devote their resources to serious cases of child abuse in which the parents were not seeking treatment voluntarily.[46]

FOOTNOTES

[Note: Footnotes follow A Uniform System of Citation (13th ed. 1981).]

1. E.g., statements of purpose in N.J. Stat. Ann. § 9:6-8.8 (West 1976); N.M. Stat. Ann § 32-1-2 (1981); Va. Code § 63.1-248.1 (1980).

2. Williams, Child Abuse Reconsidered: The Need for Authentic Prevention, 12 J. Clinical Child Psychology 312 (1983).

3. The speculation was based on a fairly broad definition of abuse and neglect. U.S. Center on Child Abuse and Neglect, National Study of the Incidence and Severity of Child Abuse and Neglect 42 (DHHS 1981) [hereinafter cited as National Study of Child Abuse].

4. For a review of the history of child abuse and the efforts to control it see, Thomas, Child Abuse and Neglect, Part I: Historical Overview, Legal Matrix, and Social Perspectives, 50 N.C.L. Rev. 293 (1972).

5. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 5 (1974) [codified at 42 U.S.C. § 5101-5106 (Supp. V. 1975)]. The act set some minimum standards for reporting and investigations which states were required to meet to qualify for federal funds, funded childhood services and research and established the National Center on Child Abuse and Neglect. The act was amended in 1978. 42 U.S.C. §§ 5102-07 (1978).

6. U.S. Children's Bureau, The Abused Child-Principles and Suggested Language for Legislation on Reporting on the Physically Abused Child (DHEW, 1963). The medical community countered with its own proposed model act. American Medical Association, Physical Abuse of Children - Suggested Legislation (1965).

7. Paulsen, The Legal Framework for Child Protection, 66 Colum. L. Rev. 679, 710-12 (1966).

8. Besharov, Child Protection: Past Progress, Present Problems, and Future Directions, 17 Fam. L.Q. 151, 153-54 (1983).

9. See, Fraser, A Glimpse at the Future: A Critical Analysis of the Development of Child Abuse Reporting Statutes, 54 Chi. Kent L. Rev. 641, 650-67 (1978).

10. Besharov, supra note 8.

11. An excellent review of the provisions of state reporting statutes is contained in Fraser, supra at 651-67. However, state statutes have been modified frequently.

The emphasis was on "non-accidental" inquiries. Frazer, A Pragmatic Alternative to Current Legislative Approaches to Child Abuse, Am. Crim. L. Rev. 103, 106-07 (1974). See Daly, Willful Child Abuse and State Reporting Statutes, 23 U. Miami L. Rev. 283 (1969).

12. The language may require reporting upon "suspicion" of abuse, or if there is a "reasonable belief" that there may be abuse or neglect or upon "reasonable cause to know or suspect," but there is limited practical difference except where civil liability may be involved. Fraser, supra note 9 at 659-60.

13. See J. Giovannoni & R. Becerra, Defining Child Abuse 4-13, 257-59 (1979). For a thorough discussion of the problems with the definitions of neglect and abuse in one state, see Beshrov, State Intervention to Protect Children: New York's Definitions of "Child Abuse" and "Child Neglect," 26 N.Y.L. Sch. L. Rev. 723 (1981).

14. National Study of Child Abuse, supra note 3.

15. Id. In part the difference between the child protective services "substantiated abuse" figures and the "in scope" abuse figures (40% v. 20%) was based on whether or not the abuser was the parent/adult "caretaker" or not. This, however, did not account for a substantial part of the difference.

16. Id. at 39.

17. Id. at 40-41. The definition used by the National Study has been criticized by some, particularly as it relates to the definition of sexual abuse and the requirement that the abuser be a parent or other caretaker. Finkelhor & Hotaling, Sexual Abuse in the

National Incidence Study of Child Abuse and Neglect: An Appraisal, 8 Child Abuse & Neglect 23 (1984).

18. See Swoboda, Elwork, Sales & Levine, Knowledge of and Compliance With Privileged Communication and Child Abuse Reporting Laws, 9 Prof. Psychology 448 (1978).

19. See J. Goldstine, A. Freud & A. Solnit, Beyond the Best Interests of the Child (1973).

20. Child rearing or family integrity are part of the constitutionally protected right of autonomy privacy. E.g. H.L. v. Matheson, 450 U.S. 398, 411 (1981); Prince v. Massachusetts, 321 U.S. 158, 166 (1944); Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925). The constitutional issues raised by state intervention to protect children are discussed in Note, Constitutional Limitations on the Scope of State Child Neglect Statutes, 79 Colum L. Rev. 719 (1979).

21. See J. Giovannoni & R. Becerra, Defining Child Abuse 3-4 (1979); Bourne & Newberger, "Family Autonomy" or "Coercive Intervention?" Ambiguity and Conflict in the Proposed Standards in Child Abuse and Neglect, 57 B.U.L. Rev. 670 (1977).

22. See, e.g., Rogers, Child and Sexual Abuse and the Courts: Preliminary Findings, 1 J. Social Work & Hum. Sexuality 1245

(1982); Williams, Child Abuse Reconsidered: The Urgency of Authentic Prevention, 1 J. Clinical Child Psychology 312 (1983).

23. The constitutional "void for vagueness" doctrine requires that criminal statutes be definite enough that ordinary people can understand what conduct is prohibited and clear enough to discourage arbitrary and discriminatory enforcement. Kolender v. Lawson, 103 S.Ct. 1855 (1983); Village of Hoffman Estates v. Flipside, 455 U.S. 489 (1982); Smith v. Goguen, 415 U.S. 566 (1974). See, Urman, Dependency Adjudication in Arizona; Problems of Vagueness and Overbreadth, 24 Ariz L. Rev. 441-63 (1982).

24. Most void for vagueness claims raised against child abuse statutes have been rejected by courts. E.g. People v. Jennings, 641 P.2d 276 (Colo. 1982); Campbell v. State, 240 So.2d 298 (Fla.) appeal dismissed, 402 U.S. 936 (1970); Hunter v. States, 360 N.E.2d 588 (Ind. App.) cert. denied, 434 U.S. 906 (1977). Some abuse statutes, or actions brought pursuant to such statutes, have been ruled overly broad or vague. States v. Ballard, 341 So.2d 957 (Ala. App.) cert. dismissed, 341 So.2d 962 (Ala. 1976); State v. Meinert, 225 Kan. 816, 594 P.2d 232 (1979); State v. Gallegos, 384 P.2d 967 (Wyo. 1963).

25. E.g., Iowa Code Ann. § 232.75(2) (West Supp. 1984); N.Y. [Soc.Serv.] Law § 420(2) (McKinney 1983); R.I. Gen Laws § 40-11-6.1 (Supp. 1983).

26. The failure to adhere to a duty described in a criminal, or similar, statute may result in negligence per se liability if the statute it was designed to protect the class of persons of which the plaintiff is a member and against the risk of harm and injury which occurred. W.P. Keeton, D. Dobbs, R. Keeton, D. Owen, Prosser and Keeton on the Law of Torts, 229-31 (W.D. Keeton 5th ed. 1984).

27. For a discussion of the negligence liability of the failure to report child abuse see Issacson, Child Abuse Reporting Statutes: The Case for Holding Physicians Civilly Liable for Failure to Report, 12 San Diego L. Rev. 743 (1972); Paulsen, Child Abuse Reporting Laws: The Shape of the Legislation, 67 Colum. L. Rev. 1, 34-36 (1967); Note, Physicians' Liability for Failure to Diagnose and Report Child Abuse, 23 Wayne L. Rev. 1187 (1977). See also Bailey, The Failure of Physicians to Report Child Abuse, 40 U. Toronto Fac. L. Rev. 49 (1982); Note, Civil Liability for Teachers' Negligent Failure to Report Suspected Child Abuse, 28 Wayne L. Rev. 183 (1981).

28. Landeros v. Flood, 17 Cal. 3d 399, 551 P.2d 389, 131 Cal. Rptr. 69 (1976); Brown & Truitt, Civil Liability in Child Abuse Cases, Chi. Kent L. Rev. 753 (1978).

29. See Bailey, The Failure of Physicians to Report Child Abuse, 40 U. Toronto Fac. L. Rev. 49, 60-61 (982).

30. Besharov, The Legal Aspects of Reporting Known and Suspected Child Abuse, 23 Vill. L. Rev. 458 (1978).

31. There are of course a number of nonlegal consequences associated with breaching confidences, notably the loss of trust between therapist and patient.

32. Fraser, supra at 667.

33. See Wald, State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards, 27 Stan. L. Rev. 985 (1975).

34. In re Phillip B., 92 Cal. App. 2d 796, 156 Cal. Rptr. 48, cert. denied, 445 U.S. 969 (1980).

35. See Wisconsin v. Yoder, 406 U.S. 205 (1972).

36. See notes 22-32 supra and accompanying text.

37. Psychotherapists are called upon to make, or help make, predictions of dangerousness in several important legal areas such as involuntary civil commitment, sentencing decisions (including capital cases), parole decisions, and warning potential victims of peril.

38. Tarasoff v. Regents of the University of California, Tarasoff v. Regents of the University of California, 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 13 (1976).

39. For a discussion of privileges and the psychotherapist-patient privilege requires some constitutional protection, see Smith, Constitutional Privacy in Psychotherapy, 49 Geo. Wash. L. Rev. 1 (1980).

40. Some courts have begun to protect psychotherapist-patient privileges in child abuse cases. Minnesota v. Andring, 342 N.W.2d 128 (Minn. 1984); D.M. v. Hoeston, No. 47744 (Mo. Ct. App. Dec. 20, 1983) reported in 8 Mental & Physical Disability L. Reporter No. 2 121-22 (April 1984). For a suggestion that confidentiality be reduced even further when child abuse or neglect is being investigated see Weisberg & Wald, Confidentiality Laws and State Efforts to Protect Abused or Neglected Children: The Need for Statutory Reform, 18 Fam. L. Q 143 (1984).

41. See Besharov Child Protection: Past Progress, Present Problems, and Future Directions, 17 Fam. L. Q. 151, 168-71 (1983).

42. Immunity or amnesty has been offered in a varied of circumstances in the United States. The amnesties provided in the United States are described in M.Sherman, Amnesty in America, 20-34 (1974). More recently some states have offered a "tax amnesty," immunity

from criminal tax prosecution for "taxpayers" who have failed to file returns in the past and turn themselves in.

43. Abuse cases are often difficult to prove, are disruptive of an already difficult family situation, and may be harmful to the child. See McKenna, A Case Study of Child Abuse: A Former Prosecutor's View, 12 Am. Crim, L. Rev. 165 (1974); Comment, Evidentiary Problems in Criminal Child Abuse, 63 Geo. L. J. 257 (1974).

44. Although the goal of deterrence would not be harmed by the immunity, some may object that other goals of punishment (retribution, just deserts, removal or rehabilitation) would not be accomplished. Note, Child Maltreatment: An Overview of Current Approaches, 18 J. Fam. L. 115, 134-37 (1979-80). The rehabilitative goal would be accomplished through treatment and there would be no need for "removal" following successful treatment. It is true that retribution and just deserts would not be satisfied. If these are seen as critical goals of punishing abusers, the qualified immunity plan would fail.

45. A number of other proposals for reform have been suggested including the use of lay therapists, Parents Anonymous, and crisis nurseries. Fraser, A Pragmatic Alternative to Current Legislative Approaches to Child Abuse, 12 Am. Crim. L. Rev. 103, 122-24 (1974).

46. For an expanded discussion of several of the issues considered in this paper see Smith & Meyers, Child Abuse Reporting Laws and Psychotherapy: A Time for Reconsideration, 7 Int'l J.L. & Psychiatry 351 (1984).